

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DONALD J. TRUMP,
Plaintiff,
- against -
CYRUS R. VANCE, JR., in his official capacity
as District Attorney of the County of New
York;
and
MAZARS USA, LLP,
Defendants.

Case No. 1:19-cv-08694 (VM)

VIA ECF

**DECLARATION OF SOLOMON
SHINEROCK**

Solomon Shinerock, an attorney admitted to practice before this Court, declares that:

1. I am an Assistant District Attorney in the office of Cyrus R. Vance, Jr., District Attorney of the County of New York (the “Office”). I am one of the assistants assigned to the investigation from which the captioned case arises. Consistent with its investigative function, the Office obtains records received in response to Grand Jury subpoenas, and accords them the highest level of confidentiality available under applicable laws governing Grand Jury secrecy.
2. I submit this declaration and the accompanying memorandum of law in support of the Office’s motion to dismiss the Complaint filed on September 19, 2019, and in opposition to the Plaintiff’s motion for a temporary restraining order and a preliminary injunction, also filed on September 19, 2019.
3. I respectfully submit that the Plaintiff is not entitled to the relief he seeks, and request that the Court deny his motion in all respects and dismiss the Complaint.

4. I assert as true the facts set forth below and in the accompanying memorandum of law based on information and belief, the sources of which are a review of documents within the files of the District Attorney's Office, conversations with knowledgeable individuals, including defense counsel, and other sources as noted herein.

A. The Grand Jury Investigation targets New York conduct and has yet to conclude as to specific charges or defendants.

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The image features a pattern of horizontal bars. Each bar is composed of two distinct horizontal segments: a solid black top segment and a white bottom segment. This pattern repeats from the top to the bottom of the frame. The bars are evenly spaced and cover the entire width of the image.

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[REDACTED]

[REDACTED]

B. Compliance with the relevant Grand Jury subpoenas began without objection.

9. On August 1, 2019, the Trump Organization, LLC, was served with a Grand Jury subpoena (the “Trump Organization Subpoena”). It called for a range of records and communications from multiple individuals and entities relating to the so-called “hush money” payments to Stephanie Clifford and Karen McDougal, how those payments were reflected in the Trump Organization’s books and records, and who was involved in determining how those payments would be reflected in the Trump Organization’s books and records. On August 7, 2019, this Office spoke with counsel for the Trump Organization to discuss priorities and establish a production schedule, and conveyed that we believed that the subpoena called for tax records for the year 2017 (which is when at least some of the “hush money” payments were recorded on the Trump Organization’s books). The Trump Organization produced records on August 15 and 29, and again on September 13, 2019. To date, the Trump Organization has produced 3376 responsive pages, but no tax records.

10. Despite a number of follow-up requests for tax returns, no specific objection was raised until a September 4, 2019 phone call, in which the Trump Organization’s counsel expressed for the first time the belief that production of the tax records implicated constitutional issues. In a follow-up email of September 9, 2019, counsel expressed the belief that no tax records were responsive to the

subpoena. A true and accurate copy of the email communications described above is attached as Exhibit 1.

11. No party has objected to the Trump Organization Subpoena or challenged the Office's requests thereunder beyond the Trump Organization's assertion that the Trump Organization Subpoena does not call for tax records.

12. On August 29, 2019, Mazars USA LLP was lawfully served with the Grand Jury subpoena that is the basis for the present suit (the "Mazars Subpoena"). The Mazars Subpoena was drafted and served days before the Trump Organization's objections to producing tax returns. It sought the same financial records that Mazars had already been called on to produce in response to third party requests, and in addition called for tax records for the years 2011 through the present. The Office spoke with counsel for Mazars in a series of phone calls to establish an agreed-upon production schedule beginning on, and extending past, the September 19, 2019 return date. Mazars did not raise any of its own objections to the subpoena.

C. The Trump Organization's request that the Office suspend the Mazars Subpoena lacked merit and foundered on the issue of taxes.

13. As of September 13, 2019, the Office had not been made aware of any intent to intervene and quash the Mazars Subpoena, and sent separate emails to counsel for the Trump Organization and for Mazars, stating that we deemed the Mazars Subpoena valid and returnable on September 19, 2019, absent a specific agreement or contrary court order.

14. On September 17, 2019, counsel for the Trump Organization met with the Office and asked for a suspension of compliance with the Mazars Subpoena pending further negotiation or litigation. Counsel articulated no legal objection to the Mazars Subpoena, and made clear that even if we negotiated a limited production, its clients would never agree to the production of tax records. The Office declined.

15. On September 18, 2019, the Trump Organization again met with the Office and requested a suspension of tax-related portion of the Mazars Subpoena for several days to allow counsel time to prepare briefs to challenge the subpoena. In response, the Office agreed to delay enforcement of the Mazars Subpoena until September 23, 2019 as it pertained to tax records, to allow the attorneys additional time to prepare their objections. True and accurate copies of three letters memorializing these discussions are attached as Exhibits 2, 3, and 4.

16. On September 19, 2019, attorneys for the Trump Organization sent the Office copies of the Plaintiff's filings in this case.

D. Prior and continuing investigations have not threatened irreparable harm, and the Plaintiff never objected to them on the grounds he raises in the present suit.

17. Public reporting has covered a number of prior and continuing investigations and prosecutions involving the Plaintiff, his associates, and related entities. Those matters have not caused irreparable harm, nor has the Plaintiff claimed that they invaded the rights he seeks to vindicate here. This is so despite that, as reported, they were marked by the robust exercise of grand jury and other investigative powers, and involved grave conduct:

- a. Special Counsel Robert Mueller oversaw an approximately two-year investigation addressing (1) whether the Plaintiff, his presidential campaign, or his associates were involved in unlawful efforts by Russia to interfere with the 2016 election, and (2) whether the Plaintiff, while President, was implicated in obstructing justice. According to public reporting, the Special Counsel's investigation involved among other things over 2,800 subpoenas, nearly 500 search warrants, and approximately 500 witnesses. It resulted in the indictment of thirty-four individuals, including foreign nationals and individuals associated with the Plaintiff and the Plaintiff's presidential campaign, on charges including

conspiracy to defraud the United States and lying to federal law enforcement officers about contacts with foreign governments.

- b. Federal prosecutors in multiple districts have investigated the origins of financing for Plaintiff's inauguration committee, how the money was spent, and whether any donations to the committee resulted in favors or special access.
- c. The New York Department of Financial Services has issued at least one subpoena seeking records and communications related to a non-criminal investigation into allegations that the Trump Organization and its officers engaged in insurance fraud.
- d. The New York Attorney General's Office has issued at least one subpoena seeking records and communications related to a currently non-criminal investigation into allegations that the Trump Organization and its officers engaged in bank fraud.
- e. Federal prosecutors obtained the conviction of Michael D. Cohen for tax fraud, false statements, and campaign finance violations, committed during the period that Mr. Cohen was counsel to the Plaintiff. The charge against Cohen also referred to an "Individual One." In testimony before Congress on February 27, 2019, Cohen testified under oath that "Individual One was in fact President Donald J. Trump."
- f. Federal prosecutors reached a non-prosecution agreement with American Media, Inc., related to an investigation into the lawfulness of "hush money" payments made in consultation with and for the benefit of the Plaintiff. These payments were made in order to prevent allegations that he had an extra-marital affair from airing in the run-up to the 2016 election.

WHEREFORE, I respectfully request that the Court deny Plaintiff's motion for a temporary restraining order and a preliminary injunction, and dismiss the Complaint.

I declare under penalty of perjury and pursuant to 28 United States Code section 1746 that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: New York, New York
September 23, 2019

Respectfully submitted,

s/Solomon Benjamin Shinerock
Solomon Benjamin Shinerock
Bar Number: SS5855
Assistant District Attorney
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EXHIBIT 1
[REDACTED]

EXHIBIT 2

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FRENCHMAN & SKLAROFF LLP

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New York, NY 10017

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Partner
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September 18, 2019

VIA EMAIL AND OVERNIGHT MAIL

Christopher Conroy (CONROYC@dany.nyc.gov)
Chief, Major Economic Crimes Bureau
District Attorney's Office, New York County
One Hogan Place
New York, NY 10013

Re: Grand Jury Subpoena Duces Tecum to Mazars USA LLP

Dear Mr. Conroy:

This letter addresses the issues discussed in today's meeting and our follow-up phone call.

As you know, we represent President Donald J. Trump and the Trump Organization in connection with a grand jury subpoena issued to Mazars USA LLP ("Mazars"). Mazars is the outside accountant to President Trump and the Trump Organization and, thus, is merely a custodian of the records sought by the subpoena. Our clients are the true parties-in-interest. We write to request, as we did at the meeting, that you temporarily suspend enforcement of the subpoena to allow for the proper and orderly resolution of the important constitutional issues raised therein. We submit that such a procedure best promotes the interests of fairness and justice—as well as respect for the Office of the President. **We are asking for a written statement from your office by 1pm on September 18, 2019, that you are willing to suspend enforcement of the Mazars subpoena pending further negotiation and/or litigation.**

By way of background, on August 1, 2019, your office issued a grand jury subpoena to the Trump Organization in connection with a certain investigation. Upon receipt of the subpoena, the Trump Organization immediately expressed its willingness to cooperate with your office and it has done so. The Trump Organization has produced hundreds of documents in response to the subpoena—including many that you identified as priority items—and additional responsive documents are being gathered, reviewed, and prepared for production. Notably, the subpoena does not call for the Trump Organization's tax returns. But when you nevertheless indicated otherwise, we agreed to meet and discuss the issue. In the meantime, the Trump Organization has maintained an open line of communication with your office, adhered to deadlines, and conducted itself in a cordial and amicable manner.

Two weeks ago, you issued a grand jury subpoena to Mazars in connection with the same investigation. That subpoena calls for Mazars to produce, among other things, many years of President Trump's personal tax returns and those of the Trump Organization. The subpoena is returnable on September 19, 2019, and, thus far, you have refused to grant Mazars an extension of time to produce the requested documents.

The issues raised by the Mazars subpoena are important and unprecedented. They raise serious constitutional issues that should be properly resolved in court. Efforts to obtain the President's tax returns are the subject of litigation in the United States Court of Appeals for the Second Circuit, the United States

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Court of Appeals for the District of Columbia Circuit, and the United States District Court for the District of Columbia. The issues at stake are simply too significant to place Mazars in the untenable position of producing the President's tax returns on September 19th or being held in contempt.

Resolution of this matter of first impression will set the course for future occupants of the Oval Office. It should be handled prudently. That is why the House Oversight Committee agreed to suspend enforcement of its subpoena to Mazars so the constitutional dispute could be litigated in an orderly fashion without burdening courts with requests for emergency relief. It would be deeply troubling if your office is unwilling to do the same here.

We respectfully request that you approach this matter with the same rectitude and courtesy Congress did when it issued subpoenas for the President's records to Mazars, Capital One, and Deutsche Bank: suspend enforcement of the subpoena to Mazars so the President of the United States can be heard in court. No prejudice will accrue to your office - your investigation appears to be historical, there is no danger of spoliation, and there is no urgency to the matter.

Finally, your blanket refusal to grant a brief extension to Mazars is inconsistent with how state and federal investigations typically proceed. The undersigned counsel has vast experience in these matters and we, collectively, do not recall an instance where at least one brief adjournment was not granted while the parties explored their legal and negotiation options. Ignoring these normal practices smacks of selective enforcement against the President.

Thank you again for meeting and for arranging a meeting with the District Attorney. We look forward to hearing from you in writing by 1pm on September 18th, and to working with you on this matter in a professional, orderly fashion.

Very truly yours,



Marc L. Mukasey
Founding Partner
Mukasey Frenchman & Sklaroff LLP
140 East 45th Street
New York, New York 10017



William S. Consavoy
Consavoy McCarthy PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209



Alan S. Futerfas
565 Fifth Avenue
New York, New York 10017

cc: Cyrus R. Vance Jr., District Attorney
ADA Solomon Shinerock

EXHIBIT 3

**DISTRICT ATTORNEY
COUNTY OF NEW YORK
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New York, N. Y. 10013
(212) 335-9000**



CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

September 18, 2019

VIA EMAIL

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Re: Grand Jury Subpoena Duces Tecum to Mazars USA LLP

Dear Mr. Mukasey,

We write in response to your letter and your in-person presentation, both of this morning. As you know, Mazars USA LLP (“Mazars”) was served with a subpoena three weeks ago on August 29, 2019 (the “Mazars Subpoena”), which called for the types of records that this Office routinely subpoenas in the course of our investigations. Our understanding is that as of the very next day, your clients had received notice of the Mazars Subpoena. To date you have not taken steps to intervene in court, nor have you asked, on behalf of Mazars, for additional time to enable production. Rather, you now ask, separately from Mazars, that we suspend the tax-related aspects of the investigation and provide you with additional time to challenge the Mazars Subpoena in court. You have made clear that your clients will never agree to the production of tax records, notwithstanding that such records are lawfully subpoenaed from a third-party.

Under these circumstances, and as we have conveyed to you before, Mazars must comply with the lawfully issued and served grand jury subpoena now pending, pursuant to a reasonable production schedule agreed to by Mazars and this Office on behalf of the Grand Jury. Your request that we suspend the tax-related aspects of the investigation into the New York conduct of New York entities is inconsistent with our unique obligations as prosecutors, and any legal challenges you may identify to the enforceability of the Mazars

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Subpoena (which, to date, you have not articulated to us), should be decided by an appropriate court, as is done in the ordinary course of our investigations. In response to your request for additional time to be heard in court, this Office will notify Mazars that it need not respond to that portion of the subpoena calling for tax records until Monday, September 23, 2019.

Sincerely,



Christopher Conroy
Chief, Major Economic Crimes Bureau
New York County District Attorney's Office
212-335-3743

EXHIBIT 4

MUKASEY
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September 19, 2019

VIA EMAIL

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Re: Grand Jury Subpoena Duces Tecum to Mazars USA LLP

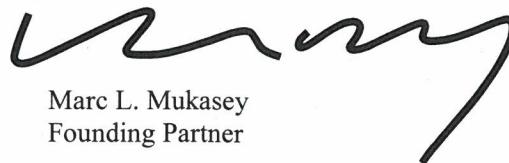
Dear Mr. Conroy:

We write in response to your letter of September 18, 2019.

Your narrative is misleading. On August 1, 2019, you issued a subpoena to the Trump Organization. We immediately expressed our willingness to comply. Shortly thereafter, as we began to gather responsive documents, you claimed that the subpoena called for tax returns. We pointed out the obvious - it does not. Your response was to make an end-run around the President and his family business by seeking years of tax returns and other documents in a sweeping subpoena to Mazars.

We have since asked repeatedly to discuss this matter with you and/or for the return date on the Mazars subpoena – September 19, 2019 - to be temporarily suspended so the serious constitutional issues raised by your actions can properly be addressed through discussion or litigation. Put another way, all we have asked for is a fair opportunity for the President of the United States to be heard. You refused.

Very truly yours,



Marc L. Mukasey
Founding Partner

cc: Cyrus R. Vance Jr., District Attorney
ADA Solomon Shinerock